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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,621	04/03/2004	Larry V. Weathers	1130	2485

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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,621

Applicant(s)

WEATHERS ET AL.

Examiner

Esther O. Okezie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 4,7-12 and 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,13-15,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 16 and 19 is/are objected to.
- 8) ☒ Claim(s) 4,7-12 and 20-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/03/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Claims 4,7-12, and 20-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/15/2005.
2. Applicant's election with traverse of claims 1-3,5,6, and 13-19 in the reply filed on 4/15/2005 is acknowledged. The traversal is on the ground(s) that examination of the species would not impose a serious burden on the examiner. This is not found persuasive because there are six distinct embodiments of the invention. Figures 1-5 show a tool with a hollow mount, a planar head and a spring clamp. Figures 6-9 show a tool with a hollow mount and a grid-shaped planar head. Figures 10 and 11 show a completely different tool similar to a dustpan, with an elongated bent handle and a folded lower body. Figures 12-14 show a tool with a planar head and mount piece with brackets and apertures. Figures 15 and 16 show a planar head without grids and a mount piece with brackets and a clamping mechanism. These distinct embodiments would require searches in several areas.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 3 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3 and recite "grate-like." It is unclear what specific structure is encompassed by such terms. Instead, a description such as "formed as a grate" is suggested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, 3, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fredrickson.
5. Re claim 1, Fredrickson discloses a multifunction hand tool capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (figure 2; 106) and a mount portion (figure 2; 102) connected at one end to a side of the head portion and oriented substantially perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle (figure 14).
6. Re claim 3, the head portion is formed as a grate (figures 5-7).
7. Re claim 6, the head portion is grate generally rectangular in shape (figure 5).

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8. Claims 1-3, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Martinez.

9. Re claim 1, Martinez discloses an object retriever device capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (figs. 5-7; 44,54,64) and a mount portion (figs 5-7; 48, 58, 66) connected at one end to a side of the head portion and oriented substantially perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle (figs 1 and 2).

10. Re claim 2, at least one generally circular screw hole (figs 5-7; 49,59,69) extending transversely through the mount, and at least one screw insertable in the at least one screw hole and in at least one corresponding similarly sized hole extending transversely through the handle (figs 1 and 2).

11. Re claim 3, the head portion is formed as a grate (fig 7).

12. Re claim 6, the head portion is grate generally rectangular in shape (fig 7).

13. Claims 1, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Streeter.

14. Re claim 1, Streeter discloses a design for a mashing device capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (lower portion of drawing) and a mount portion (mid portion of drawing before handle) connected at one end to a side of the head portion and oriented substantially

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perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle.

15. Re claim 3, the head portion is formed as a grate (see lower portion).

16. Re claim 5, head portion is generally circular in shape.

17. Claims 1,2,13,15,17,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Conover.

18. Re claim 1, Conover a combination, multifunction tool capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (22) and a mount portion connected at one end to a side of the head portion and oriented substantially perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle (see figs 1-3).

19. Re claim 2, at least one generally circular screw hole (figs 1-3) extending transversely through the mount, and at least one screw insertable in the at least one screw hole and in at least one corresponding similarly sized hole extending transversely through the handle.

20. Re claim 13, a substantially planar head portion (22); and (b) a brace (see figs 1 and 2) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion connected to an opposite side of the brace, the mount portion

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being generally cylindrical in shape and comprising an open end for receiving an end of a handle (12).

21. Re claim 15, the brace portion is generally conical in shape, and comprises a base attached to the head portion, and a frustum attached to the first, open end of the open-ended mount portion, and wherein a longitudinal axis of the brace is aligned with a longitudinal axis of the open-ended mount portion (see figs 1-3).

22. Re claim 17, the head portion is generally circular in shape (fig 1; 22).

23. Re claim 18, the head portion is generally rectangular in shape (fig 2; 22a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conover. It is unclear how many brace arms Conover shows because the tool is shown from side views only. However, figure 1 shows two triangular brace arms and figure 2 shows three, each extending out from the longitudinal axis of the brace. It would have been obvious to one of ordinary skill in the art at the time of the invention to include four brace arms in order to further strengthen the tool.

Allowable Subject Matter

Claims 16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US-4268080, US-Des. 398104, US-2128217, US-2736911, FR-2607654-A2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EOO

Kathy Matecki

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